

**UNITED STATES TRUSTEE'S POLICY REGARDING ALTERNATIVE  
APPEARANCES AT CREDITORS' MEETINGS IN CHAPTER 7 AND 13  
CASES IN THE EASTERN DISTRICT OF CALIFORNIA**

Debtors are required by statute to appear in person at their § 341(a) meeting. A debtor's right to a discharge is earned by complying with the provisions of title 11, including the requirement to personally appear at the creditors' meeting to give the trustee, creditors and other parties in interest an opportunity to examine the debtor under oath concerning the debtor's financial condition and right to a discharge. The United States Trustee expects debtors to attend their creditors' meetings in person. In the case of a husband and wife filing jointly, both debtors must appear and submit to examination.

A telephonic or other alternative appearance at a creditors' meeting in a chapter 7 or 13 case may be approved when a serious illness, serious injury, military duty, incarceration, or similar instances of extreme hardship due to factors beyond the control of the debtor prevents a debtor's personal appearance at the creditors' meeting and a personal appearance cannot be secured by continuance of the creditors' meeting.

**SACRAMENTO DIVISION.**

For cases pending in the Sacramento Division, you must take the following steps if you believe a telephonic appearance is warranted:

1. As soon as the problem arises contact the case trustee and advise him/her that a telephonic appearance will be requested. Your request must be approved by the AUST and not objected to by the trustee.

2. Immediately send a written request for a telephonic appearance to:

Antonia G. Darling  
Assistant U.S. Trustee  
501 I Street, Suite 7-500  
Sacramento, CA 95814

Requests can also be faxed to (916) 930-2099

Do this early; the fact that you wait until the last minute does not make it our emergency. Generally requests that are complete will be responded to in a few days, but if the AUST is out of town it can take longer. Two weeks should be allowed therefore.

3. The request should include the following:

Debtor's name and case number  
Date and time of the 341(if none is scheduled, no request will be granted)  
Name of the trustee  
Specific reason for the request

Supporting evidence (doctors note, military orders, declaration, etc.)  
A phone number where you can be reached during the day, or an message left.

4. If approved, the AUST will send a memo to the trustee approving the phone appearance, and a copy to debtor or counsel. Debtors' counsel will need to be present with the debtor at the time of the telephonic 341 if possible, (home, hospital, jail).

When possible, an out of town 341 meeting can be arranged for the nearest U.S. Trustee office. If not possible, and in the cases of a debtor who cannot travel, then a suitable person who can administer an oath, as authorized under the laws of the state where the debtor is located, must be retained. That person will need to be with the debtor at the beginning of the meeting to identify the debtor and to administer the oath. A verification form will be provided to the debtor or counsel, for the authorized person to complete and return to the AUST.

If the debtor is out of the country, then under international law the oath can be given by a consular officer. Be advised sometimes they charge a great deal for this service. We have heard of charges ranging from \$100-\$600.

5. Other alternatives are possible and do not require the approval of the AUST. These can be arranged directly with the trustee. This would include a brief continuance until the debtor returns or recovers, an off site meeting of creditors, or the use of Bankruptcy Rule 1016 when there is post filing death or incompetence of the debtor. (Evidence will be required).

6. Requests for a telephonic appearance for these reasons will probably NOT be granted:

The debtor is on vacation  
The debtor lived out of the area when they filed  
The debtor can't get off work (try a different time)  
The 341 is today (or yesterday) and the debtor has had this problem since the day of filing.

If you have any questions ask them immediately. Do not wait until the day of the meeting of creditors.

### **FRESNO & MODESTO DIVISIONS.**

Written requests for alternative appearances, including telephonic appearances, should be made to the case trustee, *not* the United States Trustee, in the Fresno and Modesto Divisions.

Alternative appearance requests must be supported by a declaration and other competent evidence establishing extreme hardship and the necessity for an alternative appearance. A copy of the request must be served on the United States Trustee. The request should be made in sufficient time for the trustee to consider and act upon the request before the first date set for the

meeting of creditors.

The case trustee has discretion to approve an alternative appearance under conditions that facilitate a direct, personal examination of the debtor. The case trustee will review the debtor's evidence of extreme hardship and decide whether an alternative appearance is appropriate in a particular case. The criteria for granting or denying an alternative appearance in the Fresno & Modesto Divisions is the same as the Sacramento Division. Alternative appearances are approved only in exceptional cases. The trustee can neither waive or excuse a debtor's appearance at the creditors' meeting nor accept answers to written interrogatories in lieu of a personal appearance.

The trustee will notify the debtor's counsel (or debtor, if *pro per*) of the decision to grant or deny the request for an alternative appearance. If a request for alternative appearance is approved, it is the debtor's responsibility to immediately arrange the date, time and manner of the telephonic or alternative appearance directly with the trustee. Debtor's counsel must be present during the telephonic or alternative § 341(a) meeting.

Out-of-area telephonic appearances should be made from the nearest United States Trustee office so the debtor's identity and social security number can be verified and the oath can be properly administered. The debtor must make appropriate arrangements through the United States Trustee office in Fresno for a telephonic appearance at the United States Trustee's office in the debtor's new location. If an out-of-area telephonic appearance from the nearest United States Trustee office is not possible, then a suitable person who can administer an oath, as authorized under the laws of the state where the debtor is located, must be retained to confirm the debtor's identity and social security number and administer the oath at the beginning of the telephonic appearance. A verification form will be provided to debtor's counsel (or debtor, if *pro per*) for the authorized person to complete and return to the United States Trustee office in Fresno.

The trustee will seek dismissal of the case for the debtor's non-appearance at the creditors' meeting if: (a) the debtor fails to establish extreme hardship and the necessity of an alternative appearance, or (b) the debtor is unwilling or unable to make the appropriate arrangements to accommodate an approved alternative appearance.